IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 26..10..2007

C O R A M

The Honourable Mr. A.P. Shah, Chief Justice
and
The Honourable Mr. Justice V. Ramasubramanian

Writ Appeal No.1309 of 2007

R. Venkatachalapathy .. Appellant

versus

The Senior Manager,
Indian Overseas Bank, Central Office,
No.763, Anna Salai, Chennai. .. Respondent

Prayer : Appeal under Clause 15 of the Letters Patent against the order of a learned single Judge of this Court dated 12.9.2007 passed in W.P. No.21817 of 2007.

W.P. No.21817 of 2007: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari calling for the records pertaining to the proceedings C/CDAC/DA/Nil/2007-08 dated 22.06.2007.

For Appellant : Mr. R. Subramanian

J U D G M E N T

(Delivered by the Honourable Chief Justice)

Heard the counsel appearing for the appellant. Perused the records, including the order of the learned single Judge. The appellant is the original writ petitioner. In the writ petition, he has prayed for quashing the departmental proceedings initiated agianst him, in respect of which a First Information Report (F.I.R.) has also been lodged.

2. The appellant was appointed as Sub Staff in the Indian Overseas Bank, Madurai in the year 1993. He has been working in the Madurai-Medical College Extension Branch, Madurai. On 20.12.2005, he was suspended from service for encashing certain demand drafts issued in favour of third parties. On 14.8.2006, the respondent issued a charge sheet to the appellant. The basis of the charge sheet is that he has stolen two demand draft leaves and fraudulently prepared two drafts and thus, he has misappropriated the Bank's money to the tune of Rs.5,95,000/-. The Bank lodged a police complaint against the appellant on 8.9.2006 and a criminal complaint was registered in Crime No.38 of 2006

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under Sections 380, 420, 406 and 201 of the Indian Penal Code. The appellant was arrested on the same day and remanded to judicial custody. Thereafter, on 14.10.2006, he was granted bail. He has also remitted the amount on 15.12.2006 without prejudice to his contentions. In pursuance to the charge sheet, the Bank issued a charge memo on 14.8.2006 and initiated departmental proceedings against the appellant. In the writ petition, the departmental proceedings are challenged on the ground that criminal proceedings and departmental proceedings are one and the same and therefore, the departmental proceedings are liable to be stayed. By the impugned order, the learned single dismissed the writ petition.

3. Learned counsel appearing for the appellant submitted that the charges framed against the appellant in the criminal proceedings and the charges in the departmental proceedings are on the same set of facts and hence, the departmental proceedings have to be stayed. He submitted that though the purposes of departmental enquiry and prosecution are different, what is required to be seen is that whether the departmental enquiry would seriously prejudice the delinquent in his defence in the criminal case and in the instant case, the same defence is available to the appellant in both the proceedings and the evidence would also be the same. According to him, the delinquent cannot be compelled to disclose the defence available to him in the criminal proceedings at this stage and therefore, the disciplinary proceedings will have to be stayed. In support of his submission, learned counsel heavily relied upon the decision of the Supreme Court in Paul Anthony vs. Bharat Gold Mines Ltd., A.I.R. 1999 S.C. 1416.

4. We find absolutely no merit in the submission of the learned counsel. It is well settled that departmental proceedings and criminal proceedings are entirely different in nature. They operate in different fields and they have different objectives. In departmental proceedings, the Enquiry Officer is not bound by any technical rules of evidence and procedure. The degree of proof which is necessary to record an order of conviction is different from the degree of proof necessary to record the commission of a delinquency. The rule relating to appreciation of evidence in the two proceedings is also entirely different.

5. In Paul Anthony's case (supra), which has been relied upon by the learned counsel for the appellant, a raid was conducted at the residence of the Security Officer in a Government Company and he was prosecuted and also departmentally dealt with. In the criminal trial, he was acquitted, but was found guilty in the departmental proceedings and was dismissed from service. He contended that since criminal prosecution had been launched against him, departmental enquiry ought to have been stayed, but it was not done. In any case, as he was acquitted by a competent criminal court, he was entitled to be reinstated in service. Dealing with the question of simultaneous proceedings in criminal prosecution and departmental enquiry, the Court observed as follows :

"There is a consensus of judicial opinion amongst the High

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Courts whose decisions we do not intend to refer to in this case and the various pronouncements of this Court, which shall be copiously referred to, on the basic principle that proceedings in a criminal case and the departmental proceedings can proceed simultaneously with a little exception. As we understand, the basis for this proposition is that proceedings in a criminal case and the departmental proceedings operating in the mind of the disciplinary authority may be many such as enforcement of discipline or to investigate the level of integrity of the delinquent or the other staff, the standard of proof required in those proceedings is also different than that required in a criminal case. While in the departmental proceedings the standard of proof is one of preponderance of the probabilities, in a criminal case, the charge has to be where the departmental proceedings and the criminal case are based on the same set of facts and evidence in both the proceedings is common without there being a variance."

After considering the relevant case law on the point, the Court summarized the following principles :

"(i) Departmental proceedings and proceedings in a criminal case can proceed simultaneously as there is no bar in their being conducted simultaneously, though separately.

(ii) If the departmental proceedings and the criminal case are based on identical and similar set of facts and the charge in the criminal case against the delinquent employee is of a grave nature which involves complicted questions of law and fact, it would be desirable to stay the departmental proceedings till the conclusion of the criminal case.

(iii) Whether the nature of a charge in a criminal case is grave and whether complicated questions of fact and law are involved in that case, will depend upon the nature of offence, the nature of the case launched against the employee on the basis of evidence and material collected against him during investigation or as reflected in the charge sheet.

(iv) The factors mentioned at (ii) and (iii) above cannot be considered in isolation to stay the departmental proceedings but due regard has to be given to the fact that the departmental proceedings cannot be unduly delayed.

(v) If the criminal case does not proceed or its disposal is being unduly delayed, the departmental proceedings, even if they were stayed on account of the pendency of the criminal case, can be resumed and proceeded with so as to conclude them at an early date, so that if the employee is found not guilty his honour may be vindicated and in case he is found guilty, administration may get rid of him at the earliest."

6. The question as to whether simultaneous and parallel proceedings of criminal trial and departmental enquiry are permissible in law was

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considered at length in State of Rajasthan vs. B.K. Meena, A.I.R. 1997 S.C. 13. In that case, an I.A.S. Officer working as Additional Collector misappropriated huge amounts of public Exchequer. He was prosecuted as also dealt with departmentally. He approached the Central Administrative Tribunal praying for stay against departmental enquiry contending that the departmental proceedings and criminal prosecution were based on the same facts and allegations and disclosure of his defence in departmental enquiry would cause him prejudice in criminal prosecution. The Tribunal granted the relief sought for. The State approached the Supreme Court. Allowing the appeal and quashing the order of the Tribunal, after referring to several cases on the point, the Supreme Court observed :

> "The charges against the respondent are very serious. They pertain to misappropriation of public funds to the tune of more than Rupees one crore. The observation of the Tribunal that in the course of examination of evidence, new material may emerge against the respondent and he may be compelled to disclose his defence is, at best, a surmise – a speculatory reason. We cannot accept it as valid. Though the respondent was suspended pending enquiry in May, 1990, the order has been revoked in October, 1993. The respondent is continuing in office. It is in his interest and in the interest of good administration that the truth or falsity of the charges against him is determined promptly. To wit, if he is not guilty of the charges, his honour should be vindicated early and if he is guilty, he should be dealt with appropriately without any avoidable delay. The criminal court may decide – whenever it does – whether the respondent is guilty of the offences charged and if so, what sentence should be imposed upon him. The interest of administration, however, cannot brook any delay in disciplinary proceedings"
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> .....
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> "There is yet another reason. The approach and the objective in the criminal proceedings and the disciplinary proceedings is altogether distinct and different. In the disciplinary proceedings, the question is whether the respondent is guilty of such conduct as would merit his removal from service or a lesser punishment, as the case may be, whereas in the criminal proceedings the question is whether the offences registered against him under the Prevention of Corruption Act (and the Indian Penal Code, if any) are established and, if established, what sentence should be imposed upon him. The standard of proof, the mode of enquiry and the Rules governing the enquiry and trial in both the cases are entirely distinct and different. Staying of disciplinary proceedings pending criminal proceedings, to repeat, should not be a matter of course but a considered decision."

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7. In Depot Manager, A.P. State Road Transport Corporation vs. Mohd. Yousuf, A.I.R. 1997 S.C. 2232, the Corporation initiated disciplinary proceedings against an employee alleging that due to lack of anticipation in driving a double-decker bus, he caused death of a cyclist. Prosecution was also launched against him under Section 304, Part II, I.P.C. The employee, therefore, prayed to stay the departmental enquiry. The High Court granted the prayer. The Corporation approached the Supreme Court. Allowing the appeal and setting aside the order of the High Court, the Supreme Court reiterated the principle laid down in B.K. Meena's case (supra). The Court stated as follows :

> "The purpose of departmental enquiry and of prosecution are two different and distinct aspects. The criminal prosecution is launched for an offence for violation of a duty, the offender owes to the society or for breach of which law has provided that the offender shall make satisfaction to the public. So crime is an act of commission in violation of law or of omission of public duty. The departmental enquiry is to maintain discipline in the service and efficiency of public service. It would, therefore, be expedient that the disciplinary proceedings are conducted and completed as expeditiously as possible. It is not, therefore, desirable to lay down any guidelines as inflexible rule in which the departmental proceedings may or may not be stayed pending trial in criminal case against the delinquent officer. Each case requires to be considered in the backdrop of its own facts and circumstances."

8. In a recent decision in Ajit Kumar vs. Indian Oil Corporation, (2005) 7 S.C.C. 764, the employee was dismissed from service in exercise of the power under the Standing Orders of the Corporation. He was, however, acquitted by a criminal court in a case instituted against him. He, therefore, contended that after acquittal, he was entitled to reinstatement with full back wages. Rejecting the argument and explaining the scope of criminal prosecution and departmental enquiry, the Court observed as follows :

> "As far as acquittal of the appellant by a criminal court is concerned, in our opinion, the said order does not preclude the Corporation from taking an action if it is otherwise permissible. In our judgment, the law is faily well settled. Acquittal by a criminal court would not debar an employer from exercising power in accordance with Rules and Regulations in force. The two proceedings - criminal and departmental - are entirely different. They operate in different fields and have different objectives. Whereas the object of criminal trial is to inflict appropriate punishment on the offender, the purpose of enquiry proceedings is to deal with the delinquent departmentally and to impose penalty in accordance with the service Rules. In a criminal trial, an incriminating statement made by the accused in certain circumstances or before certain

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officers is totally inadmissible in evidence. Such strict rules of evidence and procedure would not apply to departmental proceedings.

The degree of proof which is necessary to order a conviction is different from the degree of proof necessary to record the commission of delinquency. The rule relating to appreciation of evidence in the two proceedings is also not similar. In criminal law, burden of proof is on the prosecution and unless the prosecution is able to prove the guilt of the accused 'beyond reasonable doubt', he cannot be convicted by a court of law. In departmental enquiry, on the other hand, penalty can be imposed on the delinquent officer on a finding recorded on the basis of 'preponderance of probability'. Acquittal of the appellant by a Judicial Magistrate, therefore, does not ipso facto absolve him from the liability under the disciplinary jurisdiction of the Corporation. We are, therefore, unable to uphold the contention of the appellant that since he was acquitted by a criminal court, the impugned order dismissing him from service deserves to be quashed and set aside."

9. It is thus clear that both criminal proceedings as well as departmental proceedings can go on simultaneously and it is only in exceptional cases where the case is of such a grave nature or involves question of fact or law which are not simple, it would be advisable for the employer to await the decision of the trial court so that the defence of the employee in the criminal case may not be prejudiced.

10. In the present case, the defence of the appellant is one of denial. According to him, he was not connected in any manner with the missing demand draft leaves and fabrication of the demand drafts. We do not think that any prejudice is likely to be caused to the appellant in case the departmental enquiry against him is allowed to be proceeded with.

11. In the result, the writ appeal is dismissed. No costs. Consequently, M.P. No.1 of 2007 is closed.

Sd/-
Asst. Registrar.

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Sub Asst. Registrar.

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To
The Senior Manager,
Indian Overseas Bank,
Central Office,
No.763, Anna Salai,
Chennai.

+ 1 CC To Mr.R.Subramanian, Advocate SR NO.64764

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